



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: October 8, 2009
TO: Medical Marijuana Task Force
FROM: Kelly Broughton, Development Services Director
SUBJECT: Medical Marijuana Dispensaries

This memorandum is being provided as background on issues associated with medical marijuana dispensaries and recent zoning activity.

In 1996, California voters approved Proposition 215 which provided certain legal protections for qualified patients and primary caregivers cultivating and using marijuana for medicinal purposes. The law also allows qualified patients and primary caregivers to collectively or cooperatively cultivate medical marijuana but does not allow marijuana businesses to operate as dispensaries for the drug [San Diego City Attorney opinion number 2007-3, pg 1].

Due to various legal challenges and uncertainty regarding the law, implementation and regulation for medical marijuana establishments has been delayed in many jurisdictions.

In 2001, the San Diego City Council passed an ordinance establishing the Medical Cannabis Voluntary Verification Card Program. The ordinance also contained limits on permissible amounts of marijuana that patients and caregivers may possess (Municipal Code §42.1308), however no enforcement mechanism was included in the ordinance. Since that time, no other regulations for the enforcement or operation of medical marijuana cooperatives or collectives in the City of San Diego have been established.

On July 29, 2009, the City Council Public Safety and Neighborhood Services Committee recommended to the City Council the creation of a Medical Marijuana Task Force. The Task Force was "...charged with making the following recommendations concerning medical marijuana:

1. Guidelines for patients and caregivers;
2. Guidelines for the structure and operation of cooperatives and /or collectives; and
3. Guidelines for police department enforcement."

On October 6, 2009 City Council appointed the Task Force members and charged them with making recommendations on land use regulations by the end of the year.

Currently the only oversight for establishing medical marijuana cooperatives or collectives in the City of San Diego is through the standard business tax certificate process administered by the Treasurer's Office. The Development Services Department's (DSD) roll in this process is to review the proposed business description as entered into the Treasurer's Tax Certificate System (TTCS) and determine if the proposed use is permitted in the zone for the proposed business location. Denial of the zoning use approval prevents the issuance of the treasurer's business tax certificate.

Upon reviewing the TTCS application information and a San Diego City Attorney legal opinion for medical marijuana, DSD has determined that medical marijuana cooperatives or collectives do not fall within any existing Land Development Code (LDC) use category or subcategory (see Attachment – DSD Memorandum to PS&NS).

Recent court decisions regarding medical marijuana laws have apparently fueled an increased interest for people wishing to open medical marijuana cooperatives or collectives in the City of San Diego. During this last year, the Treasurer's Office has seen a dramatic increase in the number of applications for medical marijuana business tax certificates.

One such application was submitted by Ms. Livia Williams, representing New Earth Beginning Inc., a medical marijuana cooperative. The applicant was informed that DSD could not recommend approval of the business tax certificate because the proposed use did not fall into any of the uses identified in the LDC and therefore medical marijuana cooperative or collectives are not currently permitted in any zone within the City. Ms. Williams disputes DSD's determination and has filed a request for a Planning Commission determination of the appropriate use category and subcategory for a medical marijuana cooperative or collective pursuant to LDC §131.0110 (Determination of Use Category and Subcategory). The Planning Commission may either determine that an existing use category and subcategory is appropriate or that there is no appropriate use category and subcategory and that an amendment to the use regulation tables of the LDC is necessary to accommodate medical marijuana cooperatives and collectives.

The LDC lists and defines eleven major use categories and up to eleven subcategories in LDC §131.0112. The categories and subcategories most closely resembling the activity associated with medical marijuana collectives and cooperatives are:

- Retail Sales Use Category - under the Sundries, Pharmaceuticals, and Convenience Sales subcategory;
- Office Use Category - under the Medical, Dental, and Health Practitioner subcategory;
- and

- Commercial Services Use Category – under the Personal Services subcategory.

DSD has analyzed the operating requirements and characteristics of medical marijuana cooperatives and collectives and concluded that none of the above categories and subcategories is appropriate. The analysis for each follows.

Retail Sales Use Category / Sundries, Pharmaceuticals, and Convenience Sales Subcategory

The Retail Sales Use Category includes uses involving the sale, lease or rental of new or used goods to the general public. The Sundries, Pharmaceuticals, and Convenience Sales Subcategory includes uses that provide goods for personal grooming, and for the day-to-day maintenance of personal health and well being.

Medical marijuana collectives and cooperatives allow patients and caregivers to collectively cultivate marijuana for their use but they may not dispense or sell marijuana to the general public or sell medical marijuana on a retail level. "...businesses that have operated as "dispensaries" are illegal under state (and federal) law." "Any sale or distribution by anyone other than qualified patients and primary caregivers remains illegal under state law." [San Diego City Attorney opinion number 2007-3, pg. 1]. Additionally, retail pharmacies only dispense regulated medications under the supervision of a state licensed pharmacist.

Office Use Category / Medical, Dental, and Health Practitioner

The Office Use Category focuses on business, government, professional, medical or financial services conducted in a building. The Medical, Dental and Health Practitioner subcategory involves the diagnosis and treatment of human illnesses by a health professional, generally licensed by the State of California, which may be performed in an office setting. Typical uses would include medical, dental, physical therapy, and acupuncture offices.

Medical marijuana collectives and cooperatives provide marijuana for medicinal purposes to persons that have serious medical conditions. However, cooperatives and collectives do not provide medical diagnosis or treatment which is the primary component of a Medical, Dental and Health Practitioner Office Use.

Commercial Services Use Category / Personal Services

The Commercial Services Use Category includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment. The personal services subcategory includes services associated with personal grooming and the maintenance of health and well-being. Typical services would include estheticians, manicurists, barber shops and tanning salons.

Medical marijuana cooperatives and collectives are established to provide medical marijuana to persons that have serious medical conditions. Personal services are usually provided by someone other than a medical professional to maintain a person's healthy condition. They fall more

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within uses related to personal grooming would not typically include the treatment of medically diagnosed illnesses or the cultivation and distribution of a controlled substance.

The department anticipates a Planning Commission hearing sometime in November to consider Ms. Williams request for a determination.

A handwritten signature in black ink, appearing to read 'Kelly Broughton', with a horizontal line extending to the right.

Kelly Broughton
Director, Development Services Department

Attachment

cc: Honorable Mayor and City Council

RR/DJ/KGB/mf



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: July 27, 2009

TO: Public Safety & Neighborhood Services Committee

FROM: Kelly Broughton, Development Services Director

SUBJECT: Medical Marijuana Dispensaries

In recent months, the City of San Diego has seen a significant increase in the number of Business Tax Certificate requests for businesses wishing to operate as medical marijuana dispensaries within the City limits. The purpose of this memo is to provide information regarding the Development Services Department's (DSD) review process, scope of approval, and potential impacts on the surrounding communities.

In 2001, the San Diego City Council passed an ordinance regulating the cultivation, production and use of medical marijuana. The *San Diego Medical Cannabis Voluntary Verification Card Program* was added to the Municipal Code under Chapter 4, Article 2, Division 13. This program established criteria regarding patient and caregiver responsibilities, identification cards, possessable amounts, and the use of marijuana. Since that time, however, no mechanism has been developed to enforce or otherwise verify compliance with the program.

Currently the only oversight for establishing medical marijuana businesses is through the Business Tax Certificate process administrated by the Treasurer's Office. DSD's role in this process is to determine the appropriate Use Category as defined in the Land Development Code and review its consistency with the applicable zoning regulations. The Use Category determination is based on information provided by the applicant and entered into the Treasurer's Office computer system. DSD's approval of the zoning use is called a Zoning Use Certificate. In some instances, other approvals, such as a Police permit, may be required before the Treasurer's Office will issue a tax certificate.

As mentioned, DSD's review is intended to determine the compatibility of the designated Use Category with the zone. It is not intended to make determinations as to the legality of certain products or services being sold. For example, DSD would not regulate the types of medicines being sold at a retail pharmacy store or the types of procedures being performed in a chiropractic office.

Certain uses, known as *Separately Regulated Uses*, may have additional restrictions imposed upon them in the Land Development Code. An example of a Separately Regulated Use would be the sale of alcohol. In addition to a review completed by the Police Department, the Land Development Code prohibits alcohol outlets within 600 feet from any accredited school, church, park, playground, hospital or County Welfare Office or within 100 feet from residentially zoned property.

In the case of medical marijuana dispensaries, the Land Development Code does not list any additional restrictions such as those specified for alcohol sales. Depending upon the information provided, the closest designated Use Category would be *Retail Sales/Sundries, Pharmaceuticals and Convenience Sales* or *Office Use/Medical, Dental and Health Practitioner*. However, these categories allow for a very broad use across the City and do not take into consideration the unique circumstances that may be associated with marijuana distribution. Either of these categories is permitted in virtually all commercial zones, industrial zones, and many medium and high density residential zones.

According to Tax Assessor's records, there are currently eight active Business Tax Certificates issued for medical marijuana businesses in the City of San Diego. The Zoning Use Certificates were approved under the Use Categories mentioned above.

DSD has recently reviewed 30 new applications for medical marijuana Zoning Use Certificates. In light of this increase, staff has closely reviewed the determination of the appropriate existing Use Category for this type of activity and concluded that medical marijuana dispensary does not fit into an existing Use Category. If one of the 30 pending property owners disagrees with the Department's determination, they may file an application with DSD and request that the Planning Commission make a determination in accordance with LDC § 131.0110 (b) of the appropriate Use Category. If that results in a determination that the use does not fit into an existing Use Category then the City Council or Planning Commission may initiate a *Commencement of a Zoning or Rezoning Action* per LDC § 131.0110 (c) and § 123.0103 to modify the LDC to create a new Use Category or separately regulated use to regulate medical marijuana dispensaries. This action would then be included in the department's code update work program and brought back to Planning Commission and City Council at a later date.



Kelly Broughton
Director, Development Services Department

RR/KGB/mf